

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1909

Introduced by Assembly Member Ammiano
(Coauthor: Assembly Member Brownley)

February 22, 2012

An act to amend Sections 48852, 48853.5, 48911, *and* 48915.5, ~~and 48918 of~~ *of, and to add Section 48918.1 to*, the Education Code, and to amend Sections 317 and 16010 of the Welfare and Institutions Code, relating to foster children.

LEGISLATIVE COUNSEL'S DIGEST

AB 1909, as amended, Ammiano. Foster children: placement: suspension and expulsion: notifications.

(1) Existing law requires every agency that places a child in a licensed children's institution to notify the local educational agency at the time a pupil is placed in a licensed children's institution. Existing law also requires the notice made by the placing agency to ~~include~~ *provide* any available information on immediate past educational placements to facilitate prompt transfer of records and appropriate educational placement.

This bill would instead require ~~every~~ *an* agency that places a child in a licensed children's institution ~~or other out-of-home placement~~ to notify the educational liaison of the child's local educational agency at the time of that placement. The bill would ~~also require~~ *authorize* the notice made by the placing agency to include the name and contact information for a representative of the placing agency who can communicate with the child's local educational agency about educational matters, ~~the person holding the right to make educational decisions for the child,~~

and the child's attorney. ~~By imposing additional duties on a placing agency, the bill would impose a state-mandated local program. The bill would also authorize an agency that places a child in an out-of-home placement other than a licensed children's institution to notify the educational liaison of the child's local educational agency at the time of that placement, and require that the notice made by the placing agency include any available information on immediate past educational placements to facilitate prompt transfer of records and appropriate education placement, and the name and contact information for a representative of the placing agency who can communicate with the child's local educational agency about educational matters and the child's attorney.~~

(2) Existing law requires each local educational agency to designate a staff person as the educational liaison for foster children, as defined. Existing law requires the educational liaison to ensure and facilitate the proper educational placement, enrollment in school, and checkout from school of foster children, and to assist foster children when transferring from one school to another school or from one school district to another school district in ensuring the proper transfer of ~~credit~~ *credits*, records, and grades.

This bill would require the educational liaison, if designated by the superintendent of the local educational agency, to notify the foster child's attorney, ~~the person holding the right to make educational decisions for the foster child,~~ and the appropriate representative of the county child welfare agency of pending expulsion proceedings, pending proceedings to extend a suspension until an expulsion decision is rendered, ~~or~~ *and, if the foster child is an individual with exceptional needs*, pending manifestation determinations.

(3) Existing law authorizes the district superintendent of schools or other person designated by the district superintendent of schools in writing to extend the suspension of a pupil until the governing board of the school district has rendered a decision in a case where expulsion from any school or suspension from the balance of the semester from continuation school is being processed by the governing board of the school district. Existing law requires that before such an extension is granted that the district superintendent of schools or the district superintendent's designee determine, following a meeting in which the pupil and the pupil's parent or guardian are invited to participate, that the presence of the pupil at the school or in an alternative school

placement would cause a danger to persons or property or a threat of disrupting the instructional process.

This bill would require, if the pupil is a foster child, as defined, ~~that the district superintendent of schools or the district superintendent's designee to invite the pupil's attorney, the person holding the right to make educational decisions for the pupil,~~ and the appropriate representative of the county child welfare agency to that meeting.

(4) Existing law authorizes the suspension or expulsion of an individual with exceptional needs in accordance with specified provisions.

This bill would require, if the individual with exceptional needs is a foster child, as defined, ~~that the attorney for the individual with exceptional needs, the person holding the right to make educational decisions for the individual with exceptional needs,~~ and the appropriate representative of the county child welfare agency *to be invited to participate in the individualized education program team meeting that makes a manifestation determination.*

(5) Existing law requires the governing board of ~~a~~ *each* school district to establish rules and regulations governing procedures for the expulsion of pupils. ~~Existing law~~ *and* requires these procedures to include, but not necessarily be limited to, a hearing to determine whether the pupil should be expelled, and a written notice of the hearing forwarded to the pupil at least 10 calendar days prior to the date of the hearing.

This bill would require, *if the decision to recommend expulsion is a discretionary act and the pupil is a foster child, as defined,* ~~that the governing board of the school district also to provide notice of the hearing also be provided to the pupil's attorney, the person holding the right to make educational decisions for the pupil, and the an appropriate representative of the county child welfare agency at least 10 calendar days before the date of the hearing. By requiring school districts to provide additional notices, the bill would impose a state-mandated local program.~~ *The bill would authorize, if a recommendation of expulsion is required and the pupil is a foster child, the governing board of the school district also to provide the notice of the hearing to the pupil's attorney and an appropriate representative of the county child welfare agency at least 10 calendar days before the date of the hearing.*

(6) Existing law requires a juvenile court to hold a detention hearing to determine whether a minor should be further detained when a minor has been taken into custody pursuant to specified provisions. Existing law also requires a court to appoint counsel for the child if the child is

not represented by counsel, unless the court finds that the child would not benefit from the appointment of counsel. Existing law requires counsel appointed for the child to be charged in general with the representation of the child's interests.

This bill would require ~~that~~ counsel appointed for the child *to* provide his or her contact information to the educational liaison of the child's local educational agency, if, for a child 12 years of age or older, the child consents to the disclosure, or, if, for a child under 12 years of age, counsel determines the disclosure is in the child's best interest.

(7) Existing law requires, when a child is placed in foster care, that the case plan for each child include a summary of the health and education information or records of the child. Existing law requires ~~that~~ the health and education summary *to* include, but not be limited to, among other things, the names and addresses of the child's health, dental, and education providers.

This bill would ~~require that~~ *authorize* the health and education summary also *to* include the name and address of the educational liaison of the child's local educational agency. ~~By requiring the child protective agency to include additional information in the health and education summary, the bill would impose a state-mandated local program.~~

(8) This bill would also make various nonsubstantive changes to the above provisions.

~~(9) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ *no*.
State-mandated local program: ~~yes~~ *no*.

The people of the State of California do enact as follows:

1 SECTION 1. Section 48852 of the Education Code is amended
2 to read:

3 48852. (a) An agency that places a child in a licensed
4 children's institution ~~or other out-of-home placement~~ shall notify
5 the educational liaison of the child's local educational agency at
6 the time the pupil is placed in a licensed children's institution ~~or~~

~~other out-of-home placement. As part of that notification, the placing agency shall provide any available information on immediate past educational placements to facilitate prompt transfer of records and appropriate educational placement, and placement. The notification may include the name and contact information for a representative of the placing agency who can communicate with the child's local educational agency about educational matters, the person holding the right to make educational decisions for the child, and the child's attorney. Nothing~~

(b) An agency that places a child in an out-of-home placement other than a licensed children's institution may notify the educational liaison of the child's local educational agency at the time the pupil is placed in an out-of-home placement other than a licensed children's institution. As part of that notification, the placing agency shall provide any available information on immediate past educational placements to facilitate prompt transfer of records and appropriate educational placement, and the name and contact information for a representative of the placing agency who can communicate with the child's local educational agency about educational matters and the child's attorney.

(c) Nothing in this section shall be construed to prohibit prompt educational placement before notification.

SEC. 2. Section 48853.5 of the Education Code is amended to read:

48853.5. (a) This section applies to a child who has been removed from his or her home pursuant to Section 309 of the Welfare and Institutions Code, is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code, or has been removed from his or her home and is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code (hereafter "foster child").

(b) Each local educational agency shall designate a staff person as the educational liaison for foster children. In a school district that operates a foster children services program pursuant to Chapter 11.3 (commencing with Section 42920) of Part 24, the educational liaison shall be affiliated with the local foster children services program. The educational liaison shall do all of the following:

(1) Ensure and facilitate the proper educational placement, enrollment in school, and checkout from school of foster children.

1 (2) Assist foster children when transferring from one school to
2 another school or from one school district to another school district
3 in ensuring proper transfer of credits, records, and grades.

4 (c) If so designated by the superintendent of the local educational
5 agency, the educational liaison shall notify a foster child's attorney;
6 ~~the person holding the right to make educational decisions for the~~
7 ~~foster child~~; and the appropriate representative of the county child
8 welfare agency, of pending expulsion proceedings, pending
9 proceedings to extend a suspension until an expulsion decision is
10 rendered, ~~or~~, *and*, if the foster child is an individual with
11 exceptional needs, pending manifestation determinations pursuant
12 to Section 1415(k) of Title 20 of the United States Code.

13 (d) This section does not grant authority to the educational
14 liaison that supersedes the authority granted under state and federal
15 law to a parent or guardian retaining educational rights, a
16 responsible adult appointed by the court to represent the child
17 pursuant to Section 361 or 726 of the Welfare and Institutions
18 Code, a surrogate parent, or a foster parent exercising the authority
19 granted under Section 56055. The role of the educational liaison
20 is advisory with respect to placement decisions and determination
21 of school of origin.

22 (e) (1) At the initial detention or placement, or any subsequent
23 change in placement of a foster child, the local educational agency
24 serving the foster child shall allow the foster child to continue his
25 or her education in the school of origin for the duration of the
26 jurisdiction of the court.

27 (2) If the jurisdiction of the court is terminated before the end
28 of an academic year, the foster child shall be allowed to continue
29 his or her education in the school of origin through the duration
30 of the academic school year.

31 (3) To ensure that the foster child has the benefit of matriculating
32 with his or her peers in accordance with the established feeder
33 patterns of school districts, if the foster child is transitioning
34 between school grade levels, the local educational agency shall
35 allow the foster child to continue in the school district of origin in
36 the same attendance area, or, if the foster child is transitioning to
37 a middle school or high school, and the school designated for
38 matriculation is in another school district, to the school designated
39 for matriculation in that school district.

1 (4) Paragraphs (2) and (3) shall not be construed to require a
2 school district to provide transportation services to allow a foster
3 child to attend a school or school district, unless otherwise required
4 under federal law, nor shall this paragraph be construed to prohibit
5 a school district from, at its discretion, providing transportation
6 services to allow a foster child to attend a school or school district.

7 (5) The educational liaison, in consultation with and with the
8 agreement of the foster child and the person holding the right to
9 make educational decisions for the foster child, may, in accordance
10 with the foster child's best interests, recommend that the foster
11 child's right to attend the school of origin be waived and the foster
12 child be enrolled in a public school that pupils living in the
13 attendance area in which the foster child resides are eligible to
14 attend.

15 (6) Before making a recommendation to move a foster child
16 from his or her school of origin, the educational liaison shall
17 provide the foster child and the person holding the right to make
18 educational decisions for the foster child with a written explanation
19 stating the basis for the recommendation and how this
20 recommendation serves the foster child's best interest.

21 (7) (A) If the educational liaison, in consultation with the foster
22 child and the person holding the right to make educational decisions
23 for the foster child ~~agree~~, *agrees* that the best interests of the foster
24 child would best be served by his or her transfer to a school other
25 than the school of origin, the foster child shall immediately be
26 enrolled in the new school.

27 (B) The new school shall immediately enroll the foster child
28 even if the foster child has outstanding fees, fines, textbooks, or
29 other items or moneys due to the school last attended or is unable
30 to produce clothing or records normally required for enrollment,
31 such as previous academic ~~records~~, *records and* medical records,
32 including, but not limited to, records or other proof of
33 immunization history pursuant to Chapter 1 (commencing with
34 Section 120325) of Part 2 of Division 105 of the Health and Safety
35 ~~Code~~, *Code*; proof of ~~residency~~, *residency*; other documentation;;
36 or school uniforms.

37 (C) The educational liaison for the new school shall, within two
38 business days of the foster child's request for enrollment, contact
39 the school last attended by the foster child to obtain all academic
40 and other records. All required records shall be provided to the

1 new school regardless of any outstanding fees, fines, textbooks,
2 or other items or moneys owed to the school last attended. The
3 educational liaison for the school last attended shall provide all
4 records to the new school within two business days of receiving
5 the request.

6 (8) If a dispute arises regarding the request of a foster child to
7 remain in the school of origin, the foster child has the right to
8 remain in the school of origin pending resolution of the dispute.
9 The dispute shall be resolved in accordance with the existing
10 dispute resolution process available to a pupil served by the local
11 educational agency.

12 (9) The local educational agency and the county placing agency
13 are encouraged to collaborate to ensure maximum ~~utilization~~ use
14 of available federal moneys, explore public-private partnerships,
15 and access any other funding sources to promote the well-being
16 of foster children through educational stability.

17 (10) It is the intent of the Legislature that this subdivision shall
18 not supersede or exceed other laws governing special education
19 services for eligible foster children.

20 (f) For purposes of this section, “school of origin” means the
21 school that the foster child attended when permanently housed or
22 the school in which the foster child was last enrolled. If the school
23 the foster child attended when permanently housed is different
24 from the school in which the foster child was last enrolled, or if
25 there is some other school that the foster child attended with which
26 the foster child is connected and that the foster child attended
27 within the immediately preceding 15 months, the educational
28 liaison, in consultation with and with the agreement of the foster
29 child and the person holding the right to make educational decisions
30 for the foster child, shall determine, in the best interests of the
31 foster child, the school that shall be deemed the school of origin.

32 (g) This section does not supersede other law governing the
33 educational placements in juvenile court schools, as described in
34 Section 48645.1, by the juvenile court under Section 602 of the
35 Welfare and Institutions Code.

36 SEC. 3. Section 48911 of the Education Code is amended to
37 read:

38 48911. (a) The principal of the school, the principal’s designee,
39 or the district superintendent of schools may suspend a pupil from
40 the school for any of the reasons enumerated in Section 48900,

1 and pursuant to Section 48900.5, for no more than five consecutive
2 schooldays.

3 (b) Suspension by the principal, the principal's designee, or the
4 district superintendent of schools shall be preceded by an informal
5 conference conducted by the principal~~—or, the principal's~~
6 designee, or the district superintendent of schools between the pupil
7 and, whenever practicable, the teacher, supervisor, or school
8 employee who referred the pupil to the principal, the principal's
9 designee, or the district superintendent of schools. At the
10 conference, the pupil shall be informed of the reason for the
11 disciplinary action and the evidence against him or her and shall
12 be given the opportunity to present his or her version and evidence
13 in his or her defense.

14 (c) A principal, the principal's designee, or the district
15 superintendent of schools may suspend a pupil without affording
16 the pupil an opportunity for a conference only if the principal, the
17 principal's designee, or the district superintendent of schools
18 determines that an emergency situation exists. "Emergency
19 situation," as used in this article, means a situation determined by
20 the principal, the principal's designee, or the district superintendent
21 of schools to constitute a clear and present danger to the life, safety,
22 or health of pupils or school personnel. If a pupil is suspended
23 without a conference before suspension, both the parent and the
24 pupil shall be notified of the pupil's right to a conference and the
25 pupil's right to return to school for the purpose of a conference.
26 The conference shall be held within two schooldays, unless the
27 pupil waives this right or is physically unable to attend for any
28 reason, including, but not limited to, incarceration or
29 hospitalization. The conference shall then be held as soon as the
30 pupil is physically able to return to school for the conference.

31 (d) At the time of suspension, a school employee shall make a
32 reasonable effort to contact the pupil's parent or guardian in person
33 or by telephone.~~Whenever~~ If a pupil is suspended from school,
34 the parent or guardian shall be notified in writing of the suspension.

35 (e) A school employee shall report the suspension of the pupil,
36 including the cause for the suspension, to the governing board of
37 the school district or to the district superintendent of schools in
38 accordance with the regulations of the governing board of the
39 school district.

1 (f) The parent or guardian of a pupil shall respond without delay
2 to a request from school officials to attend a conference regarding
3 his or her ~~child's~~ *pupil's* behavior.

4 No penalties may be imposed on a pupil for failure of the pupil's
5 parent or guardian to attend a conference with school officials.
6 Reinstatement of the suspended pupil shall not be contingent upon
7 attendance by the pupil's parent or guardian at the conference.

8 (g) In a case where expulsion from a school or suspension for
9 the balance of the semester from continuation school is being
10 processed by the governing board of the school district, the district
11 superintendent of schools or other person designated by the district
12 superintendent of schools in writing may extend the suspension
13 until the governing board of the school district has rendered a
14 decision in the action. However, an extension may be granted only
15 if the district superintendent of schools or the district
16 superintendent's designee has determined, following a meeting in
17 which the pupil and the pupil's parent or guardian are invited to
18 participate, that the presence of the pupil at the school or in an
19 alternative school placement would cause a danger to persons or
20 property or a threat of disrupting the instructional process. If the
21 pupil is a foster child, as defined in Section 48853.5, the district
22 superintendent of schools or the district superintendent's designee,
23 including, but not limited to, the educational liaison for the school
24 district, shall also invite the pupil's attorney, ~~the person holding~~
25 ~~the right to make educational decisions for the pupil,~~ and an
26 appropriate representative of the county child welfare agency to
27 participate in the meeting. If the pupil or the pupil's parent or
28 guardian has requested a meeting to challenge the original
29 suspension pursuant to Section 48914, the purpose of the meeting
30 shall be to decide upon the extension of the suspension order under
31 this section and may be held in conjunction with the initial meeting
32 on the merits of the suspension.

33 (h) For purposes of this section, a "principal's designee" is one
34 or more administrators at the schoolsite specifically designated by
35 the principal, in writing, to assist with disciplinary procedures.

36 In the event that there is not an administrator in addition to the
37 principal at the schoolsite, a certificated person at the schoolsite
38 may be specifically designated by the principal, in writing, as a
39 "principal's designee," to assist with disciplinary procedures. The

1 principal may designate only one person at a time as the principal's
2 primary designee for the school year.

3 An additional person meeting the requirements of this
4 subdivision may be designated by the principal, in writing, to act
5 for the purposes of this article when both the principal and the
6 principal's primary designee are absent from the schoolsite. The
7 name of the person, and the names of any person or persons
8 designated as "principal's designee," shall be on file in the
9 principal's office.

10 This section is not an exception to, nor does it place any
11 limitation on, Section 48903.

12 SEC. 4. Section 48915.5 of the Education Code is amended to
13 read:

14 48915.5. (a) An individual with exceptional needs, as defined
15 in Section 56026, may be suspended or expelled from school in
16 accordance with Section 1415(k) of Title 20 of the United States
17 Code, the discipline provisions contained in Sections 300.530 to
18 300.537, inclusive, of Title 34 of the Code of Federal Regulations,
19 and other provisions of this part that do not conflict with federal
20 law and regulations.

21 (b) A free appropriate public education for individuals with
22 exceptional needs suspended or expelled from school shall be in
23 accordance with Section 1412(a)(1) of Title 20 of the United States
24 Code and Section 300.530(d) of Title 34 of the Code of Federal
25 Regulations.

26 (c) If an individual with exceptional needs is excluded from
27 schoolbus transportation, the pupil is entitled to be provided with
28 an alternative form of transportation at no cost to the pupil or parent
29 or guardian provided that transportation is specified in the pupil's
30 individualized education program.

31 (d) If the individual with exceptional needs is a foster child, as
32 defined in Section 48853.5, the attorney for the individual with
33 exceptional needs, ~~the person holding the right to make educational~~
34 ~~decisions for the individual with exceptional needs,~~ and an
35 appropriate representative of the county child welfare agency shall
36 be invited to participate in the individualized education program
37 team meeting that makes a manifestation determination pursuant
38 to Section 1415(k) of Title 20 of the United States Code.

39 ~~SEC. 5. Section 48918 of the Education Code is amended to~~
40 ~~read:~~

1 ~~48918. The governing board of a school district shall establish~~
2 ~~rules and regulations governing procedures for the expulsion of~~
3 ~~pupils. These procedures shall include, but are not necessarily~~
4 ~~limited to, all of the following:~~

5 ~~(a) The pupil shall be entitled to a hearing to determine whether~~
6 ~~the pupil should be expelled. An expulsion hearing shall be held~~
7 ~~within 30 schooldays after the date the principal or the district~~
8 ~~superintendent of schools determines that the pupil has committed~~
9 ~~any of the acts enumerated in Section 48900, unless the pupil~~
10 ~~requests, in writing, that the hearing be postponed. The adopted~~
11 ~~rules and regulations shall specify that the pupil is entitled to at~~
12 ~~least one postponement of an expulsion hearing, for a period of~~
13 ~~not more than 30 calendar days. Any additional postponement may~~
14 ~~be granted at the discretion of the governing board of the school~~
15 ~~district.~~

16 ~~Within 10 schooldays after the conclusion of the hearing, the~~
17 ~~governing board of the school district shall decide whether to expel~~
18 ~~the pupil, unless the pupil requests in writing that the decision be~~
19 ~~postponed. If the hearing is held by a hearing officer or an~~
20 ~~administrative panel, or if the governing board of the school district~~
21 ~~does not meet on a weekly basis, the governing board of the school~~
22 ~~district shall decide whether to expel the pupil within 40 schooldays~~
23 ~~after the date of the pupil's removal from his or her school of~~
24 ~~attendance for the incident for which the recommendation for~~
25 ~~expulsion is made by the principal or the district superintendent~~
26 ~~of schools, unless the pupil requests in writing that the decision~~
27 ~~be postponed.~~

28 ~~If compliance by the governing board of the school district with~~
29 ~~the time requirements for the conducting of an expulsion hearing~~
30 ~~under this subdivision is impracticable during the regular school~~
31 ~~year, the district superintendent of schools or the district~~
32 ~~superintendent's designee may, for good cause, extend the time~~
33 ~~period for the holding of the expulsion hearing for an additional~~
34 ~~five schooldays. If compliance by the governing board of the school~~
35 ~~district with the time requirements for the conducting of an~~
36 ~~expulsion hearing under this subdivision is impractical due to a~~
37 ~~summer recess of meetings of the governing board of the school~~
38 ~~district of more than two weeks, the days during the recess period~~
39 ~~shall not be counted as schooldays in meeting the time~~
40 ~~requirements. The days not counted as schooldays in meeting the~~

1 time requirements for an expulsion hearing because of a summer
2 recess of meetings of the governing board of the school district
3 shall not exceed 20 schooldays, as defined in subdivision (c) of
4 Section 48925, and unless the pupil requests in writing that the
5 expulsion hearing be postponed, the hearing shall be held not later
6 than 20 calendar days before the first day of school for the school
7 year. Reasons for the extension of the time for the hearing shall
8 be included as a part of the record at the time the expulsion hearing
9 is conducted. Upon the commencement of the hearing, all matters
10 shall be pursued and conducted with reasonable diligence and shall
11 be concluded without unnecessary delay.

12 (b) Written notice of the hearing shall be forwarded to the pupil
13 at least 10 calendar days before the date of the hearing. If the pupil
14 is a foster child, as defined in Section 48853.5, notice of the hearing
15 shall also be provided to the pupil's attorney, the person holding
16 the right to make educational decisions for the foster child, and an
17 appropriate representative of the county child welfare agency, at
18 least 10 calendar days before the date of the hearing. The notice
19 shall include all of the following:

- 20 (1) The date and place of the hearing.
- 21 (2) A statement of the specific facts and charges upon which
22 the proposed expulsion is based.
- 23 (3) A copy of the disciplinary rules of the school district that
24 relate to the alleged violation.
- 25 (4) A notice of the parent, guardian, or pupil's obligation
26 pursuant to subdivision (b) of Section 48915.1.
- 27 (5) Notice of the opportunity for the pupil or the pupil's parent
28 or guardian to appear in person or to be represented by legal
29 counsel or by a nonattorney adviser, to inspect and obtain copies
30 of all documents to be used at the hearing, to confront and question
31 all witnesses who testify at the hearing, to question all other
32 evidence presented, and to present oral and documentary evidence
33 on the pupil's behalf, including witnesses. In a hearing in which
34 a pupil is alleged to have committed or attempted to commit a
35 sexual assault as specified in subdivision (n) of Section 48900 or
36 committing a sexual battery as defined in subdivision (n) of Section
37 48900, a complaining witness shall be given five days' notice
38 before being called to testify, and shall be entitled to have up to
39 two adult support persons, including, but not limited to, a parent,
40 guardian, or legal counsel, present during their testimony. Before

~~1 a complaining witness testifies, support persons shall be
2 admonished that the hearing is confidential. Nothing in this
3 subdivision shall preclude the person presiding over an expulsion
4 hearing from removing a support person whom the presiding person
5 finds is disrupting the hearing. If one or both of the support persons
6 is also a witness, the provisions of Section 868.5 of the Penal Code
7 shall be followed for the hearing. This section does not require a
8 pupil or the pupil's parent or guardian to be represented by legal
9 counsel or by a nonattorney adviser at the hearing.~~

~~10 (A) For purposes of this section, "legal counsel" means an
11 attorney or lawyer who is admitted to the practice of law in
12 California and is an active member of the State Bar of California.~~

~~13 (B) For purposes of this section, "nonattorney advisor" means
14 an individual who is not an attorney or lawyer, but who is familiar
15 with the facts of the case, and has been selected by the pupil or
16 pupil's parent or guardian to provide assistance at the hearing.~~

~~17 (c) Notwithstanding Section 54953 of the Government Code
18 and Section 35145, the governing board of the school district shall
19 conduct a hearing to consider the expulsion of a pupil in a session
20 closed to the public, unless the pupil requests, in writing, at least
21 five days before the date of the hearing, that the hearing be
22 conducted at a public meeting. Regardless of whether the expulsion
23 hearing is conducted in a closed or public session, the governing
24 board of the school district may meet in closed session for the
25 purpose of deliberating and determining whether the pupil should
26 be expelled.~~

~~27 If the governing board of the school district or the hearing officer
28 or administrative panel appointed under subdivision (d) to conduct
29 the hearing admits any other person to a closed deliberation session,
30 the parent or guardian of the pupil, the pupil, and the counsel of
31 the pupil also shall be allowed to attend the closed deliberations.~~

~~32 If the hearing is to be conducted at a public meeting, and there
33 is a charge of committing or attempting to commit a sexual assault
34 as defined in subdivision (n) of Section 48900 or committing a
35 sexual battery as defined in subdivision (n) of Section 48900, a
36 complaining witness shall have the right to have his or her
37 testimony heard in a session closed to the public when testifying
38 at a public meeting would threaten serious psychological harm to
39 the complaining witness and there are no alternative procedures
40 to avoid the threatened harm, including, but not limited to,~~

1 videotaped deposition or contemporaneous examination in another
2 place communicated to the hearing room by means of closed-circuit
3 television.

4 ~~(d) Instead of conducting an expulsion hearing itself, the~~
5 ~~governing board of a school district may contract with the county~~
6 ~~hearing officer, or with the Office of Administrative Hearings of~~
7 ~~the State of California pursuant to Chapter 14 (commencing with~~
8 ~~Section 27720) of Part 3 of Division 2 of Title 3 of the Government~~
9 ~~Code and Section 35207, for a hearing officer to conduct the~~
10 ~~hearing. The governing board of a school district may also appoint~~
11 ~~an impartial administrative panel of three or more certificated~~
12 ~~persons, none of whom is a member of the governing board of the~~
13 ~~school district or employed on the staff of the school in which the~~
14 ~~pupil is enrolled. The hearing shall be conducted in accordance~~
15 ~~with all of the procedures established under this section.~~

16 ~~(e) Within three schooldays after the hearing, the hearing officer~~
17 ~~or administrative panel shall determine whether to recommend the~~
18 ~~expulsion of the pupil to the governing board of the school district.~~
19 ~~If the hearing officer or administrative panel decides not to~~
20 ~~recommend expulsion, the expulsion proceedings shall be~~
21 ~~terminated and the pupil immediately shall be reinstated and~~
22 ~~permitted to return to a classroom instructional program, any other~~
23 ~~instructional program, a rehabilitation program, or any combination~~
24 ~~of these programs. Placement in one or more of these programs~~
25 ~~shall be made by the district superintendent of schools or the~~
26 ~~district superintendent's designee after consultation with school~~
27 ~~district personnel, including the pupil's teachers, and the pupil's~~
28 ~~parent or guardian. The decision not to recommend expulsion shall~~
29 ~~be final.~~

30 ~~(f) If the hearing officer or administrative panel recommends~~
31 ~~expulsion, findings of fact in support of the recommendation shall~~
32 ~~be prepared and submitted to the governing board of the school~~
33 ~~district. All findings of fact and recommendations shall be based~~
34 ~~solely on the evidence adduced at the hearing. If the governing~~
35 ~~board of the school district accepts the recommendation calling~~
36 ~~for expulsion, acceptance shall be based either upon a review of~~
37 ~~the findings of fact and recommendations submitted by the hearing~~
38 ~~officer or panel or upon the results of any supplementary hearing~~
39 ~~conducted pursuant to this section that the governing board of the~~
40 ~~school district may order.~~

1 The decision of the governing board of a school district to expel
2 a pupil shall be based upon substantial evidence relevant to the
3 charges adduced at the expulsion hearing or hearings. Except as
4 provided in this section, no evidence to expel shall be based solely
5 upon hearsay evidence. The governing board of the school district
6 or the hearing officer or administrative panel may, upon a finding
7 that good cause exists, determine that the disclosure of either the
8 identity of a witness or the testimony of that witness at the hearing,
9 or both, would subject the witness to an unreasonable risk of
10 psychological or physical harm. Upon this determination, the
11 testimony of the witness may be presented at the hearing in the
12 form of sworn declarations which shall be examined only by the
13 governing board of the school district or the hearing officer or
14 administrative panel. Copies of these sworn declarations, edited
15 to delete the name and identity of the witness, shall be made
16 available to the pupil.

17 (g) A record of the hearing shall be made. The record may be
18 maintained by any means, including electronic recording, so long
19 as a reasonably accurate and complete written transcription of the
20 proceedings can be made.

21 (h) Technical rules of evidence shall not apply to the hearing,
22 but relevant evidence may be admitted and given probative effect
23 only if it is the kind of evidence upon which reasonable persons
24 are accustomed to rely in the conduct of serious affairs. A decision
25 of the governing board of the school district to expel shall be
26 supported by substantial evidence showing that the pupil committed
27 any of the acts enumerated in Section 48900.

28 In hearings that include an allegation of committing or attempting
29 to commit a sexual assault as defined in subdivision (n) of Section
30 48900 or committing a sexual battery as defined in subdivision
31 (n) of Section 48900, evidence of specific instances, of a
32 complaining witness' prior sexual conduct is to be presumed
33 inadmissible and shall not be heard absent a determination by the
34 person conducting the hearing that extraordinary circumstances
35 exist requiring the evidence be heard. Before the person conducting
36 the hearing makes the determination on whether extraordinary
37 circumstances exist requiring that specific instances of a
38 complaining witness' prior sexual conduct be heard, the
39 complaining witness shall be provided notice and an opportunity
40 to present opposition to the introduction of the evidence. In the

1 hearing on the admissibility of the evidence, the complaining
2 witness shall be entitled to be represented by a parent, guardian,
3 legal counsel, or other support person. Reputation or opinion
4 evidence regarding the sexual behavior of the complaining witness
5 is not admissible for any purpose.

6 (i) ~~(1) Before the hearing has commenced, the governing board~~
7 ~~of the school district may issue subpoenas at the request of either~~
8 ~~the district superintendent of schools or the district superintendent's~~
9 ~~designee or the pupil, for the personal appearance of percipient~~
10 ~~witnesses at the hearing. After the hearing has commenced, the~~
11 ~~governing board of the school district or the hearing officer or~~
12 ~~administrative panel may, upon request of either the county~~
13 ~~superintendent of schools or the superintendent's designee or the~~
14 ~~pupil, issue subpoenas. All subpoenas shall be issued in accordance~~
15 ~~with Sections 1985, 1985.1, and 1985.2 of the Code of Civil~~
16 ~~Procedure. Enforcement of subpoenas shall be done in accordance~~
17 ~~with Section 11455.20 of the Government Code.~~

18 ~~(2) An objection raised by the district superintendent of schools~~
19 ~~or the district superintendent's designee or the pupil to the issuance~~
20 ~~of subpoenas may be considered by the governing board of the~~
21 ~~school district in closed session, or in open session, if so requested~~
22 ~~by the pupil before the meeting. A decision by the governing board~~
23 ~~of the school district in response to an objection to the issuance of~~
24 ~~subpoenas shall be final and binding.~~

25 ~~(3) If the governing board of the school district, hearing officer,~~
26 ~~or administrative panel determines, in accordance with subdivision~~
27 ~~(f), that a percipient witness would be subject to an unreasonable~~
28 ~~risk of harm by testifying at the hearing, a subpoena shall not be~~
29 ~~issued to compel the personal attendance of that witness at the~~
30 ~~hearing. However, that witness may be compelled to testify by~~
31 ~~means of a sworn declaration as provided for in subdivision (f).~~

32 ~~(4) Service of process shall be extended to all parts of the state~~
33 ~~and shall be served in accordance with Section 1987 of the Code~~
34 ~~of Civil Procedure. All witnesses appearing pursuant to subpoena,~~
35 ~~other than the parties or officers or employees of the state or any~~
36 ~~political subdivision thereof, shall receive fees, and all witnesses~~
37 ~~appearing pursuant to subpoena, except the parties, shall receive~~
38 ~~mileage in the same amount and under the same circumstances as~~
39 ~~prescribed for witnesses in civil actions in a superior court. Fees~~

1 and mileage shall be paid by the party at whose request the witness
2 is subpoenaed.

3 (j) ~~Whether an expulsion hearing is conducted by the governing~~
4 ~~board of a school district or before a hearing officer or~~
5 ~~administrative panel, final action to expel a pupil shall be taken~~
6 ~~only by the governing board of a school district in a public session.~~
7 ~~Written notice of a decision to expel or to suspend the enforcement~~
8 ~~of an expulsion order during a period of probation shall be sent by~~
9 ~~the district superintendent of schools or his or her designee to the~~
10 ~~pupil or the pupil's parent or guardian and shall be accompanied~~
11 ~~by all of the following:~~

12 ~~(1) Notice of the right to appeal the expulsion to the county~~
13 ~~board of education.~~

14 ~~(2) Notice of the education alternative placement to be provided~~
15 ~~to the pupil during the time of expulsion.~~

16 ~~(3) Notice of the obligation of the parent, guardian, or pupil~~
17 ~~under subdivision (b) of Section 48915.1, upon the pupil's~~
18 ~~enrollment in a new school district, to inform that school district~~
19 ~~of the pupil's expulsion.~~

20 (k) ~~The governing board of the school district shall maintain a~~
21 ~~record of each expulsion, including the causes for the expulsion.~~
22 ~~Records of expulsions shall be a nonprivileged, disclosable public~~
23 ~~record.~~

24 ~~The expulsion order and the causes for the expulsion shall be~~
25 ~~recorded in the pupil's mandatory interim record and shall be~~
26 ~~forwarded to a school in which the pupil subsequently enrolls upon~~
27 ~~receipt of a request from the admitting school for the pupil's school~~
28 ~~records.~~

29 *SEC. 5. Section 48918.1 is added to the Education Code, to*
30 *read:*

31 *48918.1. (a) If the decision to recommend expulsion is a*
32 *discretionary act and the pupil is a foster child, as defined in*
33 *Section 48853.5, the governing board of the school district shall*
34 *provide written notice of the expulsion hearing to the pupil's*
35 *attorney and an appropriate representative of the county child*
36 *welfare agency at least 10 calendar days before the date of the*
37 *hearing.*

38 *(b) If a recommendation of expulsion is required and the pupil*
39 *is a foster child, as defined in Section 48853.5, the governing board*
40 *of the school district may provide written notice of the expulsion*

1 *hearing to the pupil's attorney and an appropriate representative*
2 *of the county child welfare agency at least 10 calendar days before*
3 *the date of the hearing.*

4 SEC. 6. Section 317 of the Welfare and Institutions Code is
5 amended to read:

6 317. (a) (1) When it appears to the court that a parent or
7 guardian of the child desires counsel but is presently financially
8 unable to afford and cannot for that reason employ counsel, the
9 court may appoint counsel as provided in this section.

10 (2) When it appears to the court that a parent or Indian custodian
11 in an Indian child custody proceeding desires counsel but is
12 presently unable to afford and cannot for that reason employ
13 counsel, the provisions of Section 1912(b) of Title 25 of the United
14 States Code and Section 23.13 of Title 25 of the Code of Federal
15 Regulations are applicable.

16 (b) When it appears to the court that a parent or guardian of the
17 child is presently financially unable to afford and cannot for that
18 reason employ counsel, and the child has been placed in
19 out-of-home care, or the petitioning agency is recommending that
20 the child be placed in out-of-home care, the court shall appoint
21 counsel for the parent or guardian, unless the court finds that the
22 parent or guardian has made a knowing and intelligent waiver of
23 counsel as provided in this section.

24 (c) If a child is not represented by counsel, the court shall
25 appoint counsel for the child, unless the court finds that the child
26 would not benefit from the appointment of counsel. The court shall
27 state on the record its reasons for that finding. A primary
28 responsibility of counsel appointed to represent a child pursuant
29 to this section shall be to advocate for the protection, safety, and
30 physical and emotional well-being of the child. Counsel may be
31 a district attorney, public defender, or other member of the bar,
32 provided that he or she does not represent another party or county
33 agency whose interests conflict with the child's interests. The fact
34 that the district attorney represents the child in a proceeding
35 pursuant to Section 300 as well as conducts a criminal investigation
36 or files a criminal complaint or information arising from the same
37 or reasonably related set of facts as the proceeding pursuant to
38 Section 300 is not in and of itself a conflict of interest. The court
39 may fix the compensation for the services of appointed counsel.
40 The appointed counsel shall have a caseload and training that

1 ensures adequate representation of the child. The Judicial Council
2 shall promulgate rules of court that establish caseload standards,
3 training requirements, and guidelines for appointed counsel for
4 children and shall adopt rules as required by Section 326.5 no later
5 than July 1, 2001.

6 (d) Counsel shall represent the parent, guardian, or child at the
7 detention hearing and at all subsequent proceedings before the
8 juvenile court. Counsel shall continue to represent the parent,
9 guardian, or child unless relieved by the court upon the substitution
10 of other counsel or for cause. The representation shall include
11 representing the parent, guardian, or the child in termination
12 proceedings and in those proceedings relating to the institution or
13 setting aside of a legal guardianship. On and after January 1, 2012,
14 in the case of a nonminor dependent, as described in subdivision
15 (v) of Section 11400, no representation by counsel shall be
16 provided for a parent.

17 (e) (1) Counsel shall be charged in general with the
18 representation of the child's interests. To that end, counsel shall
19 make or cause to have made any further investigations that he or
20 she deems in good faith to be reasonably necessary to ascertain
21 the facts, including the interviewing of witnesses, and shall
22 examine and cross-examine witnesses in both the adjudicatory and
23 dispositional hearings. Counsel may also introduce and examine
24 his or her own witnesses, make recommendations to the court
25 concerning the child's welfare, and participate further in the
26 proceedings to the degree necessary to adequately represent the
27 child.

28 (2) If the child is four years of age or older, counsel shall
29 interview the child to determine the child's wishes and assess the
30 child's well-being, and shall advise the court of the child's wishes.
31 Counsel shall not advocate for the return of the child if, to the best
32 of his or her knowledge, return of the child conflicts with the
33 protection and safety of the child.

34 (3) Counsel shall investigate the interests of the child beyond
35 the scope of the juvenile proceeding, and report to the court other
36 interests of the child that may need to be protected by the institution
37 of other administrative or judicial proceedings. Counsel shall
38 provide his or her contact information to the educational liaison,
39 as described in subdivision (b) of Section 48853.5 of the Education
40 Code, of the child's local educational agency if, for a child 12

1 years of age or older, the child consents to the disclosure, or, for
2 a child under 12 years of age, counsel determines that the disclosure
3 is in the child's best interest. Counsel representing a child in a
4 dependency proceeding is not required to assume the
5 responsibilities of a social worker, and is not expected to provide
6 nonlegal services to the child.

7 (4) Counsel for the child and counsel's agent may, but are not
8 required to, disclose to an individual who is being assessed for the
9 possibility of placement pursuant to Section 361.3 the fact that the
10 child is in custody, the alleged reasons that the child is in custody,
11 and the projected likely date for the child's return home, placement
12 for adoption, or legal guardianship. Nothing in this paragraph shall
13 be construed to prohibit counsel from making other disclosures
14 pursuant to this subdivision, as appropriate.

15 (5) Nothing in this subdivision shall be construed to permit
16 counsel to violate a child's attorney-client privilege.

17 (6) The changes made to this subdivision during the 2011–12
18 Regular Session of the Legislature by the act adding paragraphs
19 (4) and (5) are declaratory of existing law.

20 (7) The court shall take whatever appropriate action is necessary
21 to fully protect the interests of the child.

22 (f) Either the child or counsel for the child, with the informed
23 consent of the child if the child is found by the court to be of
24 sufficient age and maturity to consent, which shall be presumed,
25 subject to rebuttal by clear and convincing evidence, if the child
26 is over 12 years of age, may invoke the psychotherapist-client
27 privilege, physician-patient privilege, and clergyman-penitent
28 privilege. If the child invokes the privilege, counsel may not waive
29 it, but if counsel invokes the privilege, the child may waive it.
30 Counsel shall be the holder of these privileges if the child is found
31 by the court not to be of sufficient age and maturity to consent.
32 For the sole purpose of fulfilling his or her obligation to provide
33 legal representation of the child, counsel shall have access to all
34 records with regard to the child maintained by a health care facility,
35 as defined in Section 1545 of the Penal Code, health care providers,
36 as defined in Section 6146 of the Business and Professions Code,
37 a physician and surgeon or other health practitioner, as defined in
38 former Section 11165.8 of the Penal Code, as that section read on
39 January 1, 2000, or a child care custodian, as defined in former
40 Section 11165.7 of the Penal Code, as that section read on January

1 1, 2000. Notwithstanding any other law, counsel shall be given
2 access to all records relevant to the case that are maintained by
3 state or local public agencies. All information requested from a
4 child protective agency regarding a child who is in protective
5 custody, or from a child's guardian ad litem, shall be provided to
6 the child's counsel within 30 days of the request.

7 (g) In a county of the third class, if counsel is to be provided to
8 a child at the county's expense other than by counsel for the
9 agency, the court shall first utilize the services of the public
10 defender prior to appointing private counsel. Nothing in this
11 subdivision shall be construed to require the appointment of the
12 public defender in any case in which the public defender has a
13 conflict of interest. In the interest of justice, a court may depart
14 from that portion of the procedure requiring appointment of the
15 public defender after making a finding of good cause and stating
16 the reasons therefor on the record.

17 (h) In a county of the third class, if counsel is to be appointed
18 to provide legal counsel for a parent or guardian at the county's
19 expense, the court shall first utilize the services of the alternate
20 public defender prior to appointing private counsel. Nothing in
21 this subdivision shall be construed to require the appointment of
22 the alternate public defender in any case in which the public
23 defender has a conflict of interest. In the interest of justice, a court
24 may depart from that portion of the procedure requiring
25 appointment of the alternate public defender after making a finding
26 of good cause and stating the reasons therefor on the record.

27 SEC. 7. Section 16010 of the Welfare and Institutions Code is
28 amended to read:

29 16010. (a) When a child is placed in foster care, the case plan
30 for each child recommended pursuant to Section 358.1 shall include
31 a summary of the health and education information or records,
32 including mental health information or records, of the child. The
33 summary may be maintained in the form of a health and education
34 passport, or a comparable format designed by the child protective
35 agency. The health and education summary shall include, but not
36 be limited to, the names and addresses of the child's health, dental,
37 and education ~~providers and the educational liaison, as described~~
38 ~~in subdivision (b) of Section 48853.5 of the Education Code, of~~
39 ~~the child's local educational agency, providers;~~ the child's grade
40 level ~~performance, performance;~~ the child's school ~~record, record;~~

1 assurances that the child's placement in foster care takes into
2 account proximity to the school in which the child is enrolled at
3 the time of ~~placement~~, *placement*; the number of school transfers
4 the child has already ~~experienced~~, *experienced*; the child's
5 educational progress, as demonstrated by factors, including, but
6 not limited to, academic proficiency ~~scores~~, *scores*; credits earned
7 toward ~~graduation~~, *graduation*; a record of the child's
8 immunizations and ~~allergies~~, *allergies*; the child's known medical
9 ~~problems~~, *problems*; the child's current medications, past health
10 problems, and ~~hospitalizations~~, *hospitalizations*; a record of the
11 child's relevant mental health ~~history~~, *history*; the child's known
12 mental health condition and ~~medications~~, *medications*; and any
13 other relevant mental health, dental, health, and education
14 information concerning the child determined to be appropriate by
15 the Director of Social Services. *The health and education summary*
16 *may also include the name and contact information for the*
17 *educational liaison, as described in subdivision (b) of Section*
18 *48853.5 of the Education Code, of the child's local educational*
19 *agency. If any other law imposes more stringent information*
20 *requirements, then that section shall prevail.*

21 (b) Additionally, a court report or assessment required pursuant
22 to subdivision (g) of Section 361.5, Section 366.1, subdivision (d)
23 of Section 366.21, or subdivision (c) of Section 366.22 shall
24 include a copy of the current health and education summary
25 described in subdivision (a).

26 (c) As soon as possible, but not later than 30 days after initial
27 placement of a child into foster care, the child protective agency
28 shall provide the caretaker with the child's current health and
29 education summary as described in subdivision (a). For each
30 subsequent placement, the child protective agency shall provide
31 the caretaker with a current summary as described in subdivision
32 (a) within 48 hours of the placement.

33 (d) (1) Notwithstanding Section 827 or any other law, the child
34 protective agency may disclose any information described in this
35 section to a prospective caretaker or caretakers prior to placement
36 of a child if all of the following requirements are met:

37 (A) The child protective agency intends to place the child with
38 the prospective caretaker or caretakers.

39 (B) The prospective caretaker or caretakers are willing to
40 become the adoptive parent or parents of the child.

1 (C) The prospective caretaker or caretakers have an approved
2 adoption assessment or home study, a foster family home license,
3 certification by a licensed foster family agency, or approval
4 pursuant to the requirements in Sections 361.3 and 361.4.

5 (2) In addition to the information required to be provided under
6 this section, the child protective agency may disclose to the
7 prospective caretaker specified in paragraph (1), placement history
8 or underlying source documents that are provided to adoptive
9 parents pursuant to subdivisions (a) and (b) of Section 8706 of the
10 Family Code.

11 (e) The child's caretaker shall be responsible for obtaining and
12 maintaining accurate and thorough information from physicians
13 and educators for the child's summary as described in subdivision
14 (a) during the time that the child is in the care of the caretaker. On
15 each required visit, the child protective agency or its designee
16 family foster agency shall inquire of the caretaker whether there
17 is any new information that should be added to the child's summary
18 as described in subdivision (a). The child protective agency shall
19 update the summary with the information as appropriate, but not
20 later than the next court date or within 48 hours of a change in
21 placement. The child protective agency or its designee family
22 foster agency shall take all necessary steps to assist the caretaker
23 in obtaining relevant health and education information for the
24 child's health and education summary as described in subdivision
25 (a).

26 (f) At the initial hearing, the court shall direct each parent to
27 provide to the child protective agency complete medical, dental,
28 mental health, and educational information, and medical
29 background, of the child and of the child's mother and the child's
30 biological father if known. The Judicial Council shall create a form
31 for the purpose of obtaining health and education information from
32 the child's parents or guardians at the initial hearing. The court
33 shall determine at the hearing held pursuant to Section 358 whether
34 the medical, dental, mental health, and educational information
35 has been provided to the child protective agency.

36 ~~SEC. 8.— If the Commission on State Mandates determines that~~
37 ~~this act contains costs mandated by the state, reimbursement to~~
38 ~~local agencies and school districts for those costs shall be made~~

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

O